

Exhibit 2

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Transcript of the Testimony of
Robert W. Vitale

Taken On: February 19, 2008
Case Number: 2:06-CV-2141-DGC

Case: Soilworks, LLC, vs. Midwest Industrial Supply, Inc.,

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<p style="text-align: center;">UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF ARIZONA</p> <p>SOILWORKS, LLC, an Arizona) corporation,) Plaintiff,)</p> <p>vs.) CASE NO. MIDWEST INDUSTRIAL SUPPLY,) 2:06-CV-2141-DGC INC., an Ohio corporation) ATTORNEYS' EYES authorized to do business) ONLY PORTIONS in Arizona,) CONTAINED WITHIN Defendant.)</p> <p>Deposition of ROBERT W. VITALE, a witness herein, called by the Plaintiff for Examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Binnie Purser Martino, a Registered Diplomat Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, pursuant to Notice and agreement of counsel at the law offices of Vorys, Sater, Seymour and Pease, LLP, First National Tower, 106 South Main Street, Suite 1100, Akron, Ohio, on Tuesday, the 19th day of February, 2008, commencing at 9:50</p>	<p style="text-align: center;">INDEX</p> <p>EXAMINATION (By Mr. Dosek)</p> <p>Plaintiff's Exhibit 1 4</p> <p>Plaintiff's Exhibits 2 and 3 70</p> <p>Plaintiff's Exhibit 4 77</p> <p>Plaintiff's Exhibit 5 84</p> <p>Plaintiff's Exhibit 6 85</p> <p>Plaintiff's Exhibit 7 87</p>
<p>o'clock a.m.</p> <p>---</p> <p>APPEARANCES:</p> <p>On Behalf of the Plaintiff:</p> <p>KUTAK ROCK LLP</p> <p>BY: E. Scott Dosek, Attorney at Law</p> <p>Suite 300</p> <p>8601 North Scottsdale Road</p> <p>Scottsdale, Arizona 85253-2742</p> <p>480/429-5000</p> <p>On Behalf of the Defendant:</p> <p>BROUSE McDOWELL</p> <p>BY: John M. Skeriotis Attorney at Law</p> <p>388 South Main Street, Suite 500</p> <p>Akron, Ohio 44311-4407</p> <p>330/535-9999</p> <p>---</p>	<p>(Thereupon, Plaintiff's Exhibit 1 of the R. W. Vitale deposition was marked for purposes of identification.)</p> <p>ROBERT W. VITALE</p> <p>of lawful age, a witness herein, having been first duly sworn, as hereinafter certified, deposed and said as follows:</p> <p>EXAMINATION</p> <p>BY MR. DOSEK:</p> <p>Q. State your full name, please.</p> <p>A. Robert William Vitale.</p> <p>Q. You are not related to Dick, are you?</p> <p>A. No.</p> <p>Q. You have probably never been asked that before, have you?</p> <p>A. No.</p> <p>Q. Sir, what is your date of birth?</p> <p>A. August 31st, '42.</p> <p>Q. Have you ever had a deposition taken before?</p> <p>A. I have.</p> <p>Q. How many times?</p> <p>A. Five.</p> <p>Q. When is the last time?</p> <p>A. About, I think, three years ago.</p>

<p style="text-align: right;">89</p> <p>1 Q. Okay. So I will back up to one of your 2 first answers, the MSDS -- 3 A. Right. 4 Q. -- provided you with information that led 5 you to a conclusion that their Durasoil product 6 infringes the '270 patent? 7 MR. SKERIOTIS: Objection. 8 THE WITNESS: That it could 9 infringe, yeah. 10 BY MR. DOSEK: 11 Q. So maybe it does, maybe it does not? 12 MR. SKERIOTIS: Objection. 13 THE WITNESS: That is true, yeah. 14 BY MR. DOSEK: 15 Q. What additional information would you need 16 to have to conclude with certainty one way or 17 another? 18 A. A list of ingredients. 19 Q. Have you seen the list of ingredients for 20 the Durasoil product that was produced by 21 Soilworks in this lawsuit? 22 A. I don't recall, no. 23 Q. Do you recall having seen a list of 24 ingredients in any other context of the Durasoil 25 product?</p>	<p style="text-align: right;">91</p> <p>1 this is interrogatory number 2 of this set, but 2 it is number (16) overall in the lawsuit. 3 A. Oh. 4 Q. We put that in there because the rules 5 include limits to the number of interrogatories 6 that we can ask. 7 In any event, referring to interrogatory 8 number 2, it asks, "Each and every Soilworks 9 product you claim infringes." And your answer 10 there is, "At least the Durasoil product." 11 Correct? 12 A. Correct. 13 Q. Are you aware of any other Soilworks 14 product which you believe infringes the '270 15 patent? 16 A. No. 17 Q. Then interrogatory number 2 goes on to ask 18 the specific reasons why you believe any 19 infringement exists, including the scope of any 20 claimed infringement and the manner in which any 21 such products infringe the patent. 22 And your answer to that question is, "Based 23 upon the publicly available information of 24 Plaintiff's Durasoil product, excluding any 25 alleged 'proprietary ingredients,' the publicly</p>
<p style="text-align: right;">90</p> <p>1 A. No. 2 Q. Okay. 3 A. There have been your responses in one of 4 these documents in which you responded about 5 ingredients. 6 Q. Okay. Well, I guess what I am getting at 7 is, based upon your reading of the Material 8 Safety Data Sheet and Soilworks' description of 9 the ingredients in its Durasoil product, have 10 you been able to conclude one way or another if 11 you believe that the Durasoil product infringes 12 patent '270? 13 MR. SKERIOTIS: Objection. 14 THE WITNESS: If we take the 15 information that was provided us in answer to 16 one of our lists of questions, that would 17 indicate that it does not infringe. 18 BY MR. DOSEK: 19 Q. Okay. Interrogatory number 2, which begins 20 towards the top of page 3 of Exhibit 7, do you 21 see that? 22 A. Yes. 23 Q. And by the way, just for clarification, 24 number (16) in parentheses refers, again, refers 25 back to the first set of interrogatories. So</p>	<p style="text-align: right;">92</p> <p>1 available information is included within the 2 elements of at least one independent claim." Do 3 you see where I am reading there? 4 A. Yes. 5 Q. And I read that correctly, didn't I? 6 A. Correct. 7 Q. The term "independent claim," refers to an 8 independent claim of the '270 patent, correct? 9 A. I don't know. I mean, I don't quite 10 understand the actual meaning of what you have 11 just read. 12 Q. Okay. Turn, please, to page 6 of the 13 exhibit, and I am going to direct your attention 14 to interrogatory number 7. Okay? 15 A. Yes. 16 Q. And it may be necessary for us to dig into 17 Binnie's pile there. Interrogatory number 7 18 asks, "Please state each and every fact upon 19 which you rely in support of your allegation in 20 paragraph 18 of your counterclaims that 21 Soilworks has used and continued to use one or 22 more of Midwest's marks in commerce without 23 Midwest's authorization. Please state which of 24 Midwest's marks are allegedly to be used by 25 Soilworks and how it is alleged that Soilworks</p>